COLUMBIA LAW REVIEW.

Published monthly during the Academic Year by Columbia Law Students.

SUBSCRIPTION PRICE, $2.00 PER ANNUM. 30 CENTS PER NUMBER

John Martin Griffith, a member of the Editorial Board of the present volume of the COLUMBIA LAW REVIEW and of the Class of 1906, died April 20, 1906. He was the winner of the Beck Property Prize in his Class and a man of rare ability and of exceptional promise. His untimely death is a matter of deepest sorrow to his associates on the REVIEW and has deprived the profession of one who would have been indeed its ornament.

NOTES.

THE IMMUNITY OF CORPORATIONS UNDER THE FOURTH AND FIFTH AMENDMENTS.—The judges of the Court of the Star Chamber grossly abused the ecclesiastical invention of compelling a defendant to testify concerning the truth on oath and used the oath as a weapon to intimidate, browbeat, and in effect to torture the accused as well as the witnesses. This together with the other inquisitorial procedure there employed brought down the wrath of the people upon the court and it was abolished in 1641. Its abolition had an immediate effect upon the common law courts in which up to that time there had been no objection to compelling the accused to answer on oath. The result was the birth of the privilege against self-incrimination, which has been accorded a place in the fifth amendment to the constitution of the United States in the words that "no person * * * shall be compelled in any criminal case to be a witness against himself." Wigmore on Evidence, § 2250.

It is evident from its origin that the function of the privilege is to protect a person who is called to the stand to testify and that it is not intended to protect those who are not witnesses. *State* v. *Wentworth* (1875) 65 Me. 234; *Commonwealth* v. *Shaw* (1849) 4 Cush. 594; *N. Y. Life Insurance Co.* v. *The People* (1902) 195 Ill. 430; *McElree* v. *Darlington* (1898) 187 Pa. St. 593; Wigmore on Evidence, § 2196, p. 3136. Consequently the witness can set up his privilege only for his own protection and not for another's benefit. *In re Moser* (1904) 101 N. W. 588; *Brown* v. *Walker* (1896) 161 U. S. 591. This is also true where that other person is the principal or employer of the witness. *Gibbons* v. *The Waterloo Bridge Co.* (1818) 4 Price 491; *U. S. Express Co.* v. *Henderson* (1886) 69 Iowa 40. Should not the rule be applied in accordance with the two cases last cited to an officer of a corporation, who, himself granted amnesty by statute, refuses to answer questions put to him before a Federal grand jury on the ground that his answers will incriminate the corporation against which criminal proceedings are being taken? This question the Supreme Court of the United States has recently answered in the affirmative in the cases of *Hale* v. *Henkel* and *McAlister* v. *Henkel*, U. S. Sup. Ct., March 12, 1906. In view of the historical reason for the existence of the privilege no other answer could be given. It is contended, however, that the rule should not be applied to an officer or agent of a corporation because it would put a corporation at a disadvantage as compared with an individual principal and in effect deny the immunity to corporations, since a corporation can assert its right only through its agents, whereas an individual principal can assert his, himself. We have seen that the individual principal cannot prevent his agent from testifying against him. His right, then, is merely to refuse to testify when he himself is called to the stand. But a corporation is in no worse position. For apart from a bill of discovery, which is not the case we are now considering, it is only when a person is called to the stand and questions are asked that will incriminate him, that there can be any reason to claim the privilege. A corporation cannot even be called to the stand. Further, the contention assumes that a corporation possesses the privilege. But this cannot be true so far as oral questioning is concerned, as it is impossible for the privilege to exist apart from the occasion which calls it forth. It is a perversion of language to say that this is giving the immunity to an individual principal and denying it to a corporation. As well might it be said that one who has never been prosecuted is denied the privilege against double jeopardy. The individual is given the privilege when he is placed in a situation where he requires it as a protection, whereas the corporation is not given the privilege, because the occasion on which it is to act as a safeguard does not arise.

Where for the same reason an officer of a corporation refuses to produce its documents and papers the same disposition can be made. In *Hale* v. *Henkel*, however, the court, doubtless influenced by the fact that the papers belonged to the corporation and not to the officer, went further and treated the case in effect as if it were a bill of

discovery filed against a corporation. The court, distinguishing an individual from a corporation, held that the latter has no right to refuse to submit its books and papers for an examination at the suit of the state, because being a creature of the state, the state has a reserved right to demand their production. In other words, that in a grand jury investigation a corporation is not under any circumstances entitled to the privilege against self-incrimination. The reasoning of the court would not apply to a suit brought by an individual or another corporation. The privilege has been there allowed. *Logan* v. *Pa. R. R. Co.* (1890) 132 Pa. St. 403. The court also held that a corporation is entitled to the protection of the fourth amendment against unreasonable searches and seizures, saying that an association of individuals in organizing as a corporation waives "no constitutional immunities appropriate to such body." The decision comes down to this—the court felt that the immunity against unreasonable searches and seizures is appropriate to a corporation and that the privilege against self-incrimination is not. Doubtless the part of the decision in regard to the fourth amendment will meet with almost universal approbation, whereas the part in regard to the fifth amendment will find much adverse criticism. The question is an economic rather than legal one, and it is of but slight assistance to point out the constitutional rights to which the courts have in the past declared that corporations are entitled. The court reflects the rising popular feeling against corporations which violate the law and then endeavor to hide behind constitutional safeguards. The way in which the Supreme Court now responds to present needs in limiting the privilege is strikingly similar to the way in which the English courts also in response to public necessities originated the privilege in the 17th century.

JURISDICTION OF EQUITY OVER ACTS OF THE POLICE.—It is recognized as a general principle that equity will not interfere to prevent the enforcement of the criminal law, lest the supervision over a very considerable part of the criminal laws be withdrawn from the courts of law, where it properly belongs. *Davis & Farnum Mfg. Co.* v. *Los Angeles* (1902) 115 Fed. 537. Thus it refuses to enjoin a threatened arrest, *Davis* v. *A. S. P. C. A.* (1878) 75 N. Y. 362, see *Wood* v. *City of Brooklyn* (1852) 14 Barb. 424, or to try whether certain acts constitute a crime, *Kramer* v. *Police Dept.* (N. Y. 1886) 21 Jones & Spencer 492, or to stay criminal proceedings unless instituted by a party to a suit pending and designed to try the right already in issue. *In re Sawyer* (1887) 124 U. S. 200. An injunction will be granted to prevent the threatened invasion of property rights by the enforcement of an unconstitutional law, *Camden I. R. R.* v. *Catlettsburg* (1904) 129 Fed. 421, or a void ordinance. *Traction Co.* v. *Westervliet* (1901) 71 N. Y. Supp. 977; *Sylvester Coal Co.* v. *St. Louis* (1895) 130 Mo. 323, contra *Paulk* v. *Mayor* (1898) 104 Ga. 24; *Burnett* v. *Craig* (1857) 30 Ala. 135. See on general subject 2 COLUMBIA LAW REVIEW 550.

A recent case in the New York Court of Appeals has involved